IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3346 OF 2005

Mohamed Hamid Chand Momin. ...Petitioner.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
Mr.B. G. Tangsali i/b. Mr.Swapnil Pednekar for the Petitioner.
Mr. P.I. Khemani, AGP for the Respondents.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

June 16, 2005.

P.C.:

The Petitioner possesses a motor Truck bearing Registration No.MH-05-4844 which he uses for his transport business. The truck was originally purchased in 1995 and was registered by the Regional Transport Office at Kalyan. The Petitioner purchased the truck subsequently in 1999. The truck was seized on 23rd November 2004 by the Flying Squad of the Regional Transport Officer on the ground that the plying of the truck within the municipal limits of Greater Mumbai was in violation of the orders passed by a Division Bench of this court in Writ Petition 1762 of 1999 governing the phasing out of 8 year old heavy vehicles. The Petitioner has now sought the release of the

truck.

2. On 12th May 2005, the Learned Vacation Judge noted that a statement has been before the Court on behalf of the Petitioner that the Petitioner would not ply the truck within the limits of the City of Mumbai and that he would pay a sum of Rs.10,000/- by way of donation to the Chief Minister's Relief Fund within a period of two weeks. The statement was accepted and the Petitioner was called upon to file an undertaking within one week. The Learned Judge relied upon an order dated 25th April 2005 passed by the First Court in Writ Petition 2416 of 2005 and in view thereof, the Commissioner of Transport of the State Government was directed to grant the Petitioner a one time permission to take the truck outside the territorial jurisdiction of Mumbai. This, it was directed would be after the Petitioner filed an undertaking and produced a receipt evidencing payment of donation of Rs.10,000/-. The Petitioner was allowed to ply the truck in Mumbai only once for a limited purpose of taking it outside the City limits. We have been informed by Counsel appearing on behalf of the Petitioner that an amount of Rs.10,000/- has been deposited with the Chief Minister's Relief Fund and an undertaking has been filed on record.

3. A strict view will have to be taken by the Court of these violations which are taking place of the judgment and order of the Division Bench regarding the phasing out of heavy vehicles. Unless some deterrent is imposed, the order of the Court, which is based on strong grounds of public interest governing the protection of environment and public health, will be evaded with impunity. This cannot be allowed to be permitted and any breach of the order must be viewed strictly. Sufficient time has elapsed after the order of the Division Bench and it is only to be expected that all transporters should be cognizant of the order of the court.

4. In these circumstances, we are of the view that for the present, it would be appropriate to direct the Petitioner to deposit a total amount of Rs.15,000/- as a condition for the release of the truck. Since the Petitioner has already deposited an amount of Rs.10,000/-, the Petitioner is directed to deposit an additional amount of Rs.5,000/- with the Chief Minister's Relief Fund within a period of two weeks from today. The Commissioner of Transport, Government of Maharashtra, shall grant to the Petitioner a one time permission to take the truck outside the territorial limits of

Mumbai upon the deposit of the aforesaid amount. The undertaking of the Petitioner that the truck shall not be plied henceforth within the limits of the City of Mumbai is recorded and accepted. The Petitioner would, however, be at liberty to ply the truck for one journey so as to remove it outside the Municipal limits. The petition is accordingly disposed of in these terms. There shall be no order as to costs.

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